

FILED
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RICHARD W. HICKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 Larry Prunty
CDC# V-86405
2 P.O.Box 5002
Calipatria, CA 92233
3 Petitioner In Propria Persona
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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10

11 LARRY PRUNTY

12 Petitioner,)

13 v.)

14 LARRY SCRIBNER, Warden,)

15 Respondent.)

Case No. 08 2070

REQUEST TO STAY HABEAS CORPUS
PROCEEDINGS WHILE PETITIONER
FINISHES EXHAUSTING STATE
REMEDIES

MMC
(PR)

16 Petitioner respectfully requests that this Court stay claims
17 three and four (pp. 32-40) of the instant petition while Petitioner
18 finishes exhausting claims one and two (pp. 1-31) in the state
19 courts. (See Rhines v. Weber, (2005) 544 U.S. 269; Pace v. Digug-
20 lielmo, (2005) 544 U.S. 408, 416.)

21 This Request is based upon the attached Memorandum of Points
22 and Authorities, and the papers and files of the case.

23 Respectfully submitted,

24 Dated: March 8, 08

25 Larry Prunty
26 Larry Prunty
27 Petitioner In Propria Persona
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **ARGUMENT**

3 **THE DISTRICT COURT SHOULD STAY PETITIONER'S**
 4 **EXHAUSTED CLAIMS (3 & 4) WHILE HE EXHAUSTS**
 5 **THE UNEXHAUSTED CLAIMS (1 & 2) IN THE STATE**
 COURTS

6 A district court will dismiss a state prisoner's petition for
 7 writ of habeas corpus unless it appears that the prisoner has ex-
 8 hausted available state remedies. In *Rose v. Lundy*,¹ the United
 9 States Supreme Court spoke directly to state prisoners on this
 10 point: "before you bring any claims to federal court, be sure that
 11 you first have taken each one to state court."² However, when faced
 12 with a "mixed" petition, that is, a petition with both exhausted
 13 and unexhausted claims, a district court may stay and abey the ex-
 14 hausted claims while the Petitioner diligently exhausts the unex-
 15 hausted claims in state court. See *Rhines v. Weber*.³ This procedure
 16 is not uncommon, and is used most commonly by prisoners trying to
 17 "protect" their exhausted claims from statutory time limitations.
 18 See *Pace v. Diguglielmo*.⁴

19 Here, Petitioner has filed the instant Petition to protect
 20 his already exhausted claims. Claims Three and Four (pages 32-40)
 21 were exhausted on direct appeal (see Federal Habeas Petition, Ex-
 22 hibit A for copy of petition for review to California Supreme
 23 Court); but Claims One and Two (pages 1-31) have not been exhaus-

24 1. (1982) 455 U.S. 509 102 S.Ct 1198 71 L.Ed.2d 379.

25 2. *Id.* at 520.

26 3. (2005) 544 U.S. 269 125 S.Ct 1528 161 L.Ed.2d 440.

27 4. (2005) 544 U.S. 408, 416 161 L.Ed.2d 669 125 S.Ct 1807.

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1 ted, in that appellate counsel failed to raise these claims on dir-
2 ect appeal, and are being raised for the first time in Sacramento
3 County Superior Court by way of petition for writ of habeas corpus.
4 (See attached state habeas petition, pages 1-31 for unexhausted
5 claims.)

6 That Petitioner felt it necessary to protect claims Three and
7 Four in the instant Petition is the result of the Antiterrorism-
8 and-Effective-Death-Penalty-Act's-one-year statute of limitations.⁵
9 The California Supreme Court denied direct review in Petitioner's
10 case on December 20, 2006 (see Federal Petition, Appendix B), be-
11 cause no writ of certiori was filed, that decision became final
12 90 days later on March 20, 2007 (see *Bowen v. Roe*);⁶ thus, under
13 the statute of limitations, Petitioner has until March 20, 2008 to
14 file a federal petition in this Court. See *Patterson v. Stewart*.⁷

15 Accordingly, to make sure that Claims Three and Four are not
16 procedurally barred, Petitioner finds it necessary to file the
17 instant Petition in this Court before the one-year statute of limi-
18 tations is up, and request that this Court stay Claims Three and
19 Four in abeyance while Petitioner diligently exhausts Claims One
20 and Two in state courts. Respectively, Petitioner mailed the atta-
21 ched state Petition to the Sacramento Superior Court on the same
22 day he mailed the instant Petition to this Court. (See state peti-
23 tion, page 32, proof of service.) If the Superior Court denies the
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25 5. 28 U.S.C. § 2244(d)(1)(A).

26 6. 188 F.3d 1157, 1158-59 (9th Cir. 1999).

27 7. 251 F.3d 1243 (9th Cir. 2001).

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1 state petition, Petitioner will file that petition in the court of
2 appeals within 30 days of the superior court's judgment; and, if
3 the court of appeals also denies the state petition, Petitioner
4 will file that petition in the California Supreme Court within 30
5 days of that judgement; and, once the supreme court denies review,
6 Petitioner will file a perfected federal petition in this Court
7 within 30 days of that judgment.

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CONCLUSION

Petitioner respectfully requests that this Court stay habeas corpus proceedings (Claims Three and Four) while Petitioner diligently exhausts Claims One and Two in the state courts.

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